(ii) were argued, and I find no reference to such matters. Nor is there any reference to them in the Industrial Court's Award. If the issues (i) and (ii) had been placed before the Industrial Court, the question as to whether the Hotel Company was the true employer would be relevant. Otherwise it would not. It is true that in the Statement of Case the Union asked the Industrial Court to decide that question as a preliminary issue, but that was for the purpose of justifying the Union's demand for a single collective agreement. The Statement of Case does not show other purposes for asking the Industrial Court to decide that question. Nor was an issue raised in the Industrial Court as to the capacity of the Restaurant Company to issue the notices of termination of employment. Therefore the answers to questions of law before the High Court are as follows:

Answer to question of law No. (1):

The Industrial Court was correct in stating that it found no relevance to decide whether or not the Hotel Company was the employer of the workers of the restaurant, since it found that the closure was due to business losses.

Answer to question of law No. (2):

The Industrial Court did not commit jurisdictional error in declining to decide whether or not the Hotel Company was the employer of the workers of the restaurant.

I would like to take this opportunity to make the following observation. I notice that prayer was made by the Union to the Industrial Court for an order of reinstatement against the Hotel Company although the Hotel Company had not been made a party to the proceedings.

Order accordingly

Solicitors: *Skrine & Co.; Eugene Lye & Co.*

JULIA DORIE ANAK BUJANG & ORS. v. Y.T.K. SHIPPING SDN. BHD.

[O.C.J. (Chong Siew Fai J.) August 22 & 28, 1986]

[Sibu – Civil Revision No. 1 of 1986]

Workmen's Compensation – Submission of dispute to arbitration – Order of arbitrator – Whether order properly made – Scope of arbitrator's authority – Workmen's Compensation Act 1952, ss. 27 & 30.

In this case a claim was made under the Workmen's Compensation Act 1952 in respect of the death of one Chin Sey Lek. The Assistant Commissioner in pursuance of section 27 of the Act held an inquiry in which a number of issues were settled between the parties. However, two questions could not be settled by agreement and had to be referred to the arbitrator who in the instant case was the President of the Sessions Court in Sibu. At the hearing before the President, he declined to deal with the questions referred. He remitted the case "to the Commissioner to hold a full and proper inquiry in accordance with the procedures as provided for under section 27 and section 35(1)(2) *et seq.*"

As a result of a letter dated January 15, 1986, from the Assistant Director of Labour, 3rd Division Sibu, the record of these proceedings was brought before the court.

Held: (1) under section 27 of the Act an inquiry held by an Assistant Commissioner was for the purpose of settling questions arisen under the Act by agreement between him, the workman and the employer, and not in order that evidence may be gathered so as to enable an arbitrator to decide disputed questions of law referred to the latter;

(2) an Assistant Commissioner was to refer to the arbitrator all questions arisen under the Act that the parties cannot agree and the arbitrator is to decide all questions so referred irrespective of whether they are questions of fact or law (section 30 of the Act);

(3) exercising the revisionary jurisdiction, the order of the arbitrator was set aside and the case be remitted to the President of Sessions Court, Sibu, as arbitrator for a proper inquiry on the issues referred under section 30 of the Act.

Cases referred to:

(1) *Golden Hope Rubber Estate Ltd.* v. *Kuppusamy* [1964] M.L.J. 178.

(2) *Persin Kaur* v. *The Renong Tin Dredging Co. Ltd.* [1967] 2 M.L.J. 286.

CIVIL REVISION.

Boniface Ahoy Raweh (Assistant Director of Labour) for Commissioner.

Respondent company unrepresented.

Cur. Adv. Vult.

Chong Siew Fai J.: The record of these proceedings was brought before this court as a result of a letter dated January 15, 1986, from the Assistant Director of Labour, 3rd Division, Sibu. The matter concerns a claim under the Workmen's Compensation Act 1952 (hereinafter referred to as "the Act") in respect of the death of one Chin Sey Lek. The respondent company is a shipping company known as Y.T.K. Shipping Sdn. Bhd.

For the purpose of the present proceedings it is unnecessary to go into the agreed and the disputed facts and circumstances of the incident giving rise

to this claim. Suffice it to state that consequent upon an application for compensation by the dependants of the deceased, the Assistant Commissioner in pursuance of section 27 of the Act held an inquiry in which a number of issues were settled by agreement between the employer, the applicants and the Assistant Commissioner. From the proceedings as recorded by the Assistant Commissioner, two questions, however, could not be settled by agreement and had to be referred to the arbitrator. Under the law, the arbitrator in the instant case is the President of the Sessions Court in Sibu. The two questions (which could have been better framed) as recorded and referred are:

"1. That the deceased's death did not arise out of and during the course of his employment with the Respondent Company.

2. That nobody saw how and where the deceased met his death."

At the hearing before the then President, he declined to deal with the questions referred. He remitted the case "to the commissioner to hold a full and proper inquiry in accordance with the procedures as provided for under section 27 and section 35(1)(2) *et seq.*" He based his decision on two grounds:

1. That questions of fact must be decided by the commissioner and that he, as an arbitrator, was to deal only with questions of law; and

2. He criticized the manner of the inquiry held by the Assistant Commissioner and considered that the inquiry had not been duly and properly conducted.

As to ground 1 above, this is what he said in his judgment:

"The commissioner has referred to 2 questions, the first being a question of law and the other a question of fact. The commissioner must decide the question of fact himself after a full and proper inquiry.

....

The case is remitted to the commissioner to hold a full and proper inquiry ... and then refer only any question of law, if any, upon such inquiry and careful consideration."

In my view the President had erred. Subject to the proviso which is irrelevant to the instant case, section 27(1) of the Act provides:

"If any question arises under this Act that question shall be settled by agreement between the Commissioner, the workman and the employer and for the purposes of reaching such agreement the Commissioner may hold an inquiry."

By section 3(1) of the Act, the Commissioner in relation to Sarawak, includes an Assistant Commissioner for Labour under the Labour Ordinance of Sarawak (Cap. 76).

Hence leaving aside the right of making decisions required under sections 8, 10, 14 and 15 of the Act, the inquiry which the Commissioner may hold is for the express purpose of concluding agreement between the parties concerned respecting any question arising under the Act. Regarding the functions of the Commissioner under the Act, the following observation of Ong J. in *Golden Hope Rubber Estate Ltd.* v. *Kuppusamy*[1] is pertinent. He said (page 180):

"The function of the Commissioner for Labour, under section 27 of the Ordinance, is only to hold an inquiry for the purposes of settling disputed questions between workmen and employer by agreement. Where such questions cannot be settled by agreement they have to be referred to the arbitrator for his award or decision (see section 30). In this case agreement was manifestly out of the question from almost the very beginning of the proceedings, when the employer denied that the accident arose in the course of the deceased's employment. In default of agreement the Assistant Commissioner for Labour, as an administrative officer, had no jurisdiction whatsoever in proceeding any step further to undertake the judicial functions of holding an inquiry and deciding on the merits of the claim. These functions properly belong to the arbitrator."

Although *Golden Hope Rubber Estate Ltd.* v. *Kuppusamy, supra,* was subsequently reversed (see [1965] 1 M.L.J. 178), the above observation of Ong J. was cited with approval in the Federal Court decision of *Persin Kaur* v. *The Renong Tin Dredging Co. Ltd.*[2]

Under section 30 of the Act, *any* question, arising under the Act which the parties concerned cannot settle by agreement under section 27, shall be decided by an arbitrator. In the context of the instant case, it is important to note the words used in the said section 30 are "*any* question," and not just questions of law.

As to ground 2 above, the learned President said in his judgment:

"It is impossible to decide the question (Q.1) referred to without the relevant material before the court and it is the duty of the commissioner to furnish this material after a full and proper and careful consideration. The commissioner has not made an inquiry in accordance with the procedure and has done only a sloppy and perfunctory job. A mere discussion with anyone even the managing director is not an inquiry within the meaning of section 27."

Before dealing with this ground, it is necessary to point out that at the hearing before this court on June 13, 1986, I inquired about the evidence recorded from witnesses which, in my view, ought to have been in existence if witnesses had been examined during the inquiry held by the Commissioner, (see section 35(2) of the Act, and regulations 26(2) and 33(c) and (d) of the Workmen's Compensation Regulations 1953). I was informed that statements of witnesses were recorded but were inadvertently omitted from inclusion in the record submitted to the Sessions Court. I accordingly called for a copy of the complete record which was subsequently produced. Upon perusal of the copy lastly produced, it is clear that oral evidence of witnesses had in fact been recorded but was not included in and therefore did not form part of the record of proceedings forwarded to the Sessions Court. In the circumstance, the remarks of the learned President, though somewhat strongly worded, cannot be said to be totally unwarranted. I would also mention here that the recorded statements of the witnesses were also not incorporated in the copy of the inquiry proceedings annexed to the application for revision dated January 15, 1986, forwarded to this court.

Another matter may be noted. The copy of proceedings sent to this court consequent upon the hearing on June 13, 1986, was supposed to be a complete copy, even that was typed and arranged that the contents were not in sequence in point of time and could only be intelligibly read by connecting different parts from different pages. I am constrained to say that greater care should be exercised in preparing documents to be presented to court so that issues could be more easily identified and more speedily disposed of.

Now, reverting to the ground in question, I am not aware of any statutory provision imposing, nor do I think there is, a duty on the Commissioner to collect material or evidence for the sole purpose that the arbitrator may decide questions (whether questions of law or fact) referred to him, though, if, in the course of an inquiry held by the Commissioner, evidence is recorded which subsequently turns out to be relevant and can properly be relied on or where the parties agree that it be relied on, there seems nothing objectionable for the arbitrator to act upon such material or evidence in considering the questions referred to him. Normally, however, it may be more satisfactory, particularly in dealing with questions of fact, for the arbitrator to hear evidence afresh rather than relying on the materials recorded by the Commissioner so as to afford himself an opportunity to observe the witnesses and assess the weight and value of their evidence. In this connection, section 35(1) of the Act empowers an arbitrator (as well as the Commissioner) to summon and examine witnesses and compel production of documents and other materials, and under regulations 40 and 42 of the Workmen's Compensation Regulations 1953, an arbitrator may call for production of evidence.

In the instant case, since the parties could not reach agreement on the two questions referred, it would be pointless for the Assistant Commissioner to hold further inquiry in pursuance of section 27 of the Act under which, as stated earlier, the inquiry is for the purpose of reaching agreement on questions among the parties.

In short, it is my view:

(1) that under section 27 of the Act, an inquiry held by an Assistant Commissioner is for the purpose of settling questions arisen under the Act by agreement between him, the workman and the employer, and not in order that evidence may be gathered so as to enable an arbitrator to decide disputed questions of law referred to the latter; and

(2) that an Assistant Commissioner is to refer to the arbitrator all questions arisen under the Act that the parties cannot agree and the arbitrator is to decide all questions so referred irrespective of whether they are questions of fact or of law (section 30 of the Act).

In the instant case, no decision under section 30 of the Act has been made on the questions referred. In the circumstance and for the reasons given above, I consider that the revisionary power should be exercised. The order of the arbitrator made on October 8, 1984, is set aside and the case be remitted to the President of Sessions Court, Sibu, as arbitrator for a proper inquiry on the issues referred under section 30 of the Act.

Order accordingly.